

**STATE EMPLOYEE ETHICS AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: John Dougall**

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**LONG TITLE****General Description:**

This bill modifies the Public Officers' and Employees' Ethics Act to restrict gifts given to public employees and enacts the Lobbying Restrictions Act, which places restrictions on public employee's lobbying activities upon leaving employment.

**Highlighted Provisions:**

This bill:

- ▶ modifies the Public Officers' and Employees' Ethics Act to prohibit public employees and their immediate family members from receiving a gift of any value if it is given primarily as a result of their status as a public employee; and
- ▶ enacts the Lobbying Restrictions Act, which prohibits public employees from acting as a lobbyist for one year after leaving public employment.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**36-11-103**, as last amended by Chapter 27, Laws of Utah 2003

**67-16-5**, as last amended by Chapters 13 and 92, Laws of Utah 1998

ENACTS:

**36-11a-101**, Utah Code Annotated 1953



28           **36-11a-102**, Utah Code Annotated 1953

29           **36-11a-201**, Utah Code Annotated 1953

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31 *Be it enacted by the Legislature of the state of Utah:*

32           Section 1. Section **36-11-103** is amended to read:

33           **36-11-103. Licensing requirements.**

34           (1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the  
35 lieutenant governor by completing the form required by this section.

36           (b) The lieutenant governor shall issue licenses to qualified lobbyists.

37           (c) The lieutenant governor shall prepare a Lobbyist License Application Form that  
38 includes:

39           (i) a place for the lobbyist's name and business address;

40           (ii) a place for the name and business address of each principal for whom the lobbyist  
41 works or is hired as an independent contractor;

42           (iii) a place for the name and address of the person who paid or will pay the lobbyist's  
43 registration fee, if the fee is not paid by the lobbyist;

44           (iv) a place for the lobbyist to disclose any elected or appointed position that the  
45 lobbyist holds in state or local government, if any;

46           (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist  
47 will be reimbursed; and

48           (vi) a certification to be signed by the lobbyist that certifies that the information  
49 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and  
50 belief.

51           (2) Each lobbyist who obtains a license under this section shall update the licensure  
52 information when the lobbyist accepts employment for lobbying by a new client.

53           (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a  
54 lobbying license to an applicant who:

55           (i) files an application with the lieutenant governor that contains the information  
56 required by this section; and

57           (ii) pays a \$25 filing fee.

58           (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals

and expires on December 31 of each even-numbered year.

(4) (a) The lieutenant governor may disapprove an application for a lobbying license:

(i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107, 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;

(ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304 within one year before the date of the lobbying license application;

(iii) for the term of any suspension imposed under Section 36-11-401; ~~[or]~~

(iv) if, within one year before the date of the lobbying license application, the applicant has been found to have willingly and knowingly:

(A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305, or 36-11-403; or

(B) filed a document required by this chapter that the lobbyist knew contained materially false information or omitted material information~~[-]; or~~

(v) if the applicant is prohibited from becoming a lobbyist under Title 36, Chapter 11a, Lobbying Restrictions Act.

(b) An applicant may appeal the disapproval in accordance with the procedures established by the lieutenant governor under this chapter and Title 63, Chapter 46b, Administrative Procedures Act.

(5) The lieutenant governor shall deposit license fees in the General Fund.

(6) A principal need not obtain a license under this section, but if the principal makes expenditures to benefit a public official without using a lobbyist as an agent to confer those benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.

(7) Government officers need not obtain a license under this section, but shall disclose any expenditures made to benefit public officials as required by Sections 36-11-201.

(8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the reports by Section 36-11-201.

Section 2. Section **36-11a-101** is enacted to read:

## **CHAPTER 11a. LOBBYING RESTRICTIONS ACT**

### **Part 1. General Provisions**

#### **36-11a-101. Title.**

This chapter is known as the "Lobbying Restrictions Act."

Section 3. Section **36-11a-102** is enacted to read:

**36-11a-102. Definitions.**

As used in this chapter:

(1) "Executive action" means:

(a) nominations and appointments by the governor;

(b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(c) agency ratemaking proceedings.

(2) "Legislative action" means:

(a) bills, resolutions, amendments, nominations, and other matters pending or proposed in either house of the Legislature or its committees or requested by a legislator; and

(b) the action of the governor in approving or vetoing legislation.

(3) "Legislator" means a member or member-elect of either house of the Legislature.

(4) "Lobbying" means communicating with a public official for the purpose of influencing the passage, defeat, amendment, or postponement of a legislative action or an executive action.

(5) (a) "Lobbyist" means an individual who is employed by a principal or who contracts for economic consideration, other than reimbursement for reasonable travel expenses, with a principal to lobby a public official.

(b) "Lobbyist" does not include:

(i) a public official acting in his official capacity on matters pertaining to his office;

(ii) a state employee acting within the scope of his employment;

(iii) any person appearing at, or providing written comments to, a hearing conducted in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, or Title 63, Chapter 46b, Administrative Procedures Act;

(iv) any person participating on or appearing before an advisory or study task force, commission, board, or committee, constituted by the Legislature or any agency or department of state government, except legislative standing, appropriation, or interim committees;

(v) a representative of a political party;

(vi) an individual representing a bona fide church solely for the purpose of protecting

121 the right to practice the religious doctrines of that church;

122 (vii) an elected official of a local government acting within the scope of his official  
123 capacity on matters pertaining to his office;

124 (viii) an employee of a local government acting within the scope of his employment; or

125 (ix) an individual appearing on his own behalf before a committee of the Legislature or  
126 an executive branch agency solely for the purpose of testifying in support of, or in opposition  
127 to, legislative or executive action.

128 (6) "Person" includes individuals, bodies politic and corporate, partnerships,  
129 associations, and companies.

130 (7) "Principal" means a person who employs a lobbyist either as an employee or as an  
131 independent contractor.

132 (8) (a) "Public employee" means a person who is employed on a full-time, part-time, or  
133 contract basis by the state or any of its political subdivisions.

134 (b) "Public employee" does not mean a legislator, a legislative employee, or a public  
135 official.

136 (9) "Public official" means:

137 (a) a legislator;

138 (b) an individual elected to a position in the executive branch; or

139 (c) an individual appointed to or employed in the executive or legislative branch if that  
140 individual:

141 (i) occupies a policymaking position or makes purchasing or contracting decisions;

142 (ii) drafts legislation or makes rules;

143 (iii) determines rates or fees; or

144 (iv) makes adjudicative decisions.

145 Section 4. Section **36-11a-201** is enacted to read:

146 **Part 2. Lobbying Restrictions**

147 **36-11a-201. Qualified prohibitions on lobbyists.**

148 (1) Except as provided in Subsection (2), a former public employee may not become a  
149 lobbyist or engage in lobbying activities for one calendar year, beginning on the date the public  
150 employee leaves employment and continuing through the one-year anniversary of that date.

151 (2) This section does not apply if the former public employee:

(a) engages in lobbying on behalf of himself or a business with which he is associated, other than a business whose primary activity is lobbying or governmental relations; and

(b) does not engage in activities that would require registration as a lobbyist.

Section 5. Section **67-16-5** is amended to read:

**67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

(1) As used in this section, "economic benefit tantamount to a gift" includes:

(a) a loan at an interest rate that is substantially lower than the commercial rate then currently prevalent for similar loans; and

(b) compensation received for private services rendered at a rate substantially exceeding the fair market value of the services.

(2) It is an offense for a public officer~~[-public employee,]~~ or legislator, under circumstances not amounting to a violation of Section 63-56-72 or 76-8-105, to knowingly receive, accept, take, seek, or solicit, directly or indirectly, or for himself or another, a gift of substantial value or a substantial economic benefit tantamount to a gift:

(a) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties;

(b) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken; or

(c) if he recently has been, is now, or in the near future may be involved in any governmental action directly affecting the donor or lender, unless a disclosure of the gift, compensation, or loan and other relevant information has been made in the manner provided in Section 67-16-6.

(3) Subsection (2) does not apply to:

(a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

(b) an award publicly presented in recognition of public services;

(c) any bona fide loan made in the ordinary course of business; or

(d) a political campaign contribution.

(4) (a) As used in this Subsection (4):

(i) "Gift" means a transfer of any tangible or intangible property, or any item of value, for less than fair and adequate consideration.

183           (ii) "Gift" does not mean:  
184           (A) an award publicly presented in recognition of public services; or  
185           (B) a bona fide loan made in the ordinary course of business.  
186           (b) It is an offense for a public employee, under circumstances not amounting to a  
187 violation of Section 63-56-72 or 76-8-105, to knowingly accept, take, seek, or solicit a gift,  
188 either directly or indirectly, or for himself or another, if the public employee knows or a  
189 reasonable person in the public employee's position should know, under the circumstances, that  
190 the gift is given primarily as a result of the public employee's status as a public employee.

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**Legislative Review Note**  
**as of 1-26-05 5:30 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0282**

State Employee Ethics Amendments

10-Feb-05  
1:49 PM

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**State Impact**

Provisions of this bill can be handled within existing budgets.

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**Individual and Business Impact**

Minimal impact.

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Office of the Legislative Fiscal Analyst